

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE FORMAL)
COMPLAINT OF GREGORY TERINONI)
AGAINST DELMARVA POWER & LIGHT) PSC Complaint Docket 15-1066
COMPANY CONCERNING SERVICE)
TERMINATION FOR NON PAYMENT)
(FILED JUNE 24, 2015))

RESPONSE OF DELMARVA POWER & LIGHT COMPANY
TO COMPLAINANT TERINONI'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

Todd L. Goodman
Pamela J. Scott
Counsel for Delmarva Power & Light Company
P.O. Box 6066
Newark, DE 19714-6066
(302) 429-3143
todd.goodman@pepcoholdings.com
pjscott@pepcoholdings.com

Dated: 9/23/15

On September 16, 2015, Complainant Gregory Terinoni (Terinoni) filed a Motion for Summary Judgment (the “SJ Motion”). The SJ Motion was accompanied by a twenty seven (27) page brief, in which Terinoni argues that the Delaware Public Service Commission does not have jurisdiction to adjudicate Terinoni’s complaint. The SJ Motion is but one of numerous motions filed by Terinoni’s counsel on September 16th. Delmarva will not waste the Hearing Examiner’s time by filing a lengthy answering brief addressing the multiple misplaced arguments offered by Terinoni’s counsel as to why the Commission no longer has jurisdiction to hear complaints by Delmarva Power customers. Despite the efforts of Mr. Terinoni to complicate a simple issue, the error in the argument is clear.

Mr. Terinoni’s arguments in his brief on Motion for Summary Judgment can be boiled down to two:

1. That Mr. Terinoni is a Standard Offer Service customer of Delmarva Power. Delmarva Agrees that Mr. Terinoni is an SOS customer. Accordingly, the Hearing Examiner need not address the argument on that issue set forth at pages 6 through 11 of Terinoni’s brief.
2. That through House Bill 96 (HB 96), which was signed into law on June 26, 2013, the General Assembly stripped the Commission of its long standing, well-established jurisdiction to investigate and adjudicate complaints by Delmarva Power customers. Delmarva Disagrees.

The rules for statutory construction in Delaware are well established. As the Delaware Supreme Court has stated:

In the construction of a statute, this Court has established as its standard the search for legislative intent. Where the intent of the legislature is clearly reflected by unambiguous language in the statute, the language itself controls. If uncertainty exists, however, rules of statutory construction are applied. To that end, the statute

must be viewed as a whole, and literal or perceived interpretations which yield mischievous or absurd results are to be avoided.¹

HB 96, referred to in Terinoni's brief as the "2013 Amendment," amended then-existing 26 Del. C. § 201 (c). The pertinent section of HB 96 is quoted below and amended 26 Del. C. § 201 as follows (*insertions shown by underlining and deletions shown by strike through*):

§ 201 General jurisdiction and powers

(c)(1) Notwithstanding any other provision of law, in the exercise of supervision and regulation over public utilities, the Commission (1) shall forbear from regulating the rates, terms and conditions of competitive retail communications services and (2) shall not investigate or adjudicate retail customer complaints for services except complaints related to the adequate provisioning of basic services....²

Delmarva Power asserts that the language added to § 201 (c) by HB 96 is clear on its face: the jurisdictional limitations contained in subsections (1) and (2) of § 201 (c) are intended to apply only to "*competitive retail communications services....*"³ In the event that it is determined that the language of § 201 (c) (1) and (2) is not "clearly reflected by unambiguous language in the statute," the Delaware Supreme Court has long held that "the synopsis of [a] Bill [is] a proper source from which to glean legislative intent...."⁴ A brief review of both the title and the Synopsis of HB 6 conclusively resolves the issue.

¹ *Spielberg v. State*, 558 A.2d 291, 293 (DE 1989) (*internal citations omitted*) citing *Daniel v. State*, 538 A.2d 1104, 1110 (DE Super 1988) and *Burpulis v. Director of Revenue*, 498 A.2d 1082, 1087 (De 1985).

² HB 96 - 79 Del. Laws ch. 53 (*underlining and strike through original*). A copy of HB 96 is attached hereto for the Hearing Examiner's convenience as "Exhibit 1."

³ *Id.*

⁴ *Carper v. N.C. Co Bd. Of Education*, 432 A.2d 1202, 1205 (De Supr. 1981).

First: The title of HB 96 itself provides as follows: “AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION AND PUBLIC UTILITIES PROVIDING TELECOMMUNICATIONS SERVICES.”⁵ The very title of HB 96 makes it even more clear that the jurisdiction limitations of § 201 (c) (1) and (2) are intended to apply only to “PUBLIC UTILITIES PROVIDING TELECOMMUNICATIONS SERVICES.”⁶

Second: The “SYNOPSIS” of HB 96 provides, in pertinent part, as follows: “This bill amends sections of Title 26 which govern the public utilities that provide telecommunications services.”⁷ With respect to “Section 2” of HB 96, which is the section of the Bill that amends § 201 (c) (1) and (2), the Synopsis provides as follows: “Section[] 2 ... amend[s] various provisions of Title 26 applicable to telecommunications service providers....”⁸ Accordingly, the General Assembly’s intent is clear: the limitation of Commission jurisdiction in § 201 (c) (2) applies only to “PUBLIC UTILITIES THAT PROVIDE TELECOMMUNICATIONS SERVICES.”⁹

Finally, Mr. Terinoni’s argument - that in passing HB 96, the General Assembly intended to strip the Commission of its jurisdiction to investigate and adjudicate complaints by Delmarva Power customers – is a fine example of the kind of “absurd result” that the Delaware Supreme

⁵ Exhibit 1 at Page 1 of 13. (*capitalization original; underlining added*).

⁶ *Id.* (*capitalization original*).

⁷ *Id.* at Page 12 of 13. (*underlining added*).

⁸ *Id.* at Page 13 of 13. (*underlining added*).

⁹ *Id.* at Page 1 of 13. (*capitalization original*).

Court refers to.¹⁰ The Hearing Examiner need not address the issue of absurdity, however, because a brief review of legislative intent makes it abundantly clear that Mr. Terinoni's argument is entirely meritless.¹¹

WHEREFORE, Delmarva Power respectfully requests that Mr. Terinoni's Motion for Summary Judgment be DENIED.

Respectfully Submitted:

A handwritten signature in blue ink, appearing to read 'T. Goodman', is written over a horizontal line.

Todd L. Goodman
Pamela J. Scott
Counsel for Delmarva Power & Light Company
P.O. Box 6066
Newark, DE 19714-6066
(302) 429-3143
pjscott@pepcoholdings.com

Dated: 9/23/15

¹⁰ *Spielberg v. State*, 558 A.2d at 293.

¹¹ Mr. Terinoni first mentions HB 96 on page 11 of the Opening Brief and then spends the next 13 pages (pages 11-24) arguing legislative intent and statutory construction. Delmarva questions how Mr. Terinoni's counsel can make the legislative intent behind HB 96 the primary argument of his motion without addressing the clear language of the Bill itself (i.e., the title of the Bill and the Synopsis). Delmarva Power believes that the Hearing Examiner will want that question answered as well.



SPONSOR: Rep. Scott & Sen. Bushweller
Reps. Bennett, Briggs King, Hudson, Longhurst, Miro,
Outten, Paradee, Ramone, D. Short, Smyk, Viola; Sens.
Blevins, Ennis, Lavelle, Peterson, Poore, Venables

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 96

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE JURISDICTION OF THE
PUBLIC SERVICE COMMISSION AND PUBLIC UTILITIES PROVIDING TELECOMMUNICATION SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter VII-A, Title 26 of the Delaware Code by making insertions as shown by underlining
2 and deletions as shown by strike through as follows:

3 § 704. Election of a telecommunications service provider to be governed by this subchapter.

4 (a) A telecommunications service provider offering services as defined within § 705 of this title or any other
5 provider offering competitive services as defined in § 705(c)(1)b. of this title may elect or any telecommunication service
6 provider that has previously elected may reelect, upon or after July 15, 2008¹³, to determine its rates and prices for its
7 telecommunications services pursuant to this subchapter. Upon the filing of written notice to the Commission of such an
8 election or reelection, ~~§§ 209(a), 215 of this title and, subchapters II and III of this chapter shall no longer apply except as~~
9 specifically provided hereinafter and, in lieu thereof, this subchapter shall govern. ~~If any provision of subchapter II of this~~
10 ~~chapter is inconsistent with the intent or provisions of this subchapter, the provisions of this subchapter shall control.~~

11 (b) An election by a service provider to be governed by this subchapter shall be effective for a term of not less than
12 3 years and shall automatically be extended for additional 3-year terms except as described below. Not less than 1 year
13 prior to the expiration of any term, the service provider shall notify the Commission if it no longer wishes to be governed
14 by this subchapter. Upon receipt of such notification, the Commission shall commence an open and public proceeding to
15 determine what appropriate form of regulation should be applied to such provider under § 703 of this title. The Commission
16 shall conclude any such proceeding by final order within 12 months from the filing of such notification and, in making its
17 determination, the Commission shall give appropriate consideration to the form of regulation, if any, then applicable to
18 competitors of such service provider.

19 (c) (1) Nothing in this subchapter shall be construed to affect the rights, duties or obligations of
20 telecommunications carriers, including those carriers who are parties to interconnection agreements approved by the
21 Commission on or before January, 1, 2008, set forth in §§ 251-252 of the federal Telecommunications Act, 47 U.S.C. §§
22 251-252, including but not limited to, the duty to negotiate interconnection agreements, to provide interconnection, to

provide access to unbundled network elements, and to provide resale, nor shall anything in this subchapter affect the exercise of authority assigned to the Commission by §§ 251-252 of the federal Telecommunications Act, 47 U.S.C. §§ 251-252, including but not limited to the authority to arbitrate and approve interconnection agreements.

(2) Nothing in this subchapter shall be construed to affect the applicability or enforcement of the provisions of Chapter 100 of Title 16 of the Delaware Code ("911 – The Enhanced Emergency Number Service") or the applicability or enforcement of the provisions of Chapter 101 of Title 16 of the Delaware Code ("Enhanced 911 Emergency System Reporting Fund").

§ 705. Definitions.

(a) "Basic services" shall mean:

(1) Individual residential local exchange access line and residential local usage; at a location where there is no alternative provider of telephone service available to retail residential customers determined in accordance with subsection (d) below; and

~~(2) Individual business local exchange access line and business local usage to the extent the services are provided to business customers ordering single-line business at a particular address;~~

~~(3) Switched access services;~~

~~(4) White pages listings; whether listed, nonlisted or private;~~

~~(5) Telecommunications relay service;~~

~~(6) 911 enhanced emergency system; and~~

~~(7) Touchtone service.~~

(b) "Bundle" means a combination of retail services offered as a package, either at a single price or with the availability of the price for 1 or more services contingent on the purchase of other services, and includes any telephone service combined with any other telephone service or any nontelephone services, including services offered by an affiliate of a telephone company or an unregulated entity.

(c) (1) "Competitive services" shall mean:

a. All services which are not classified as "basic" in subsection (a) of this section above;

b. Any bundled service, even if the bundled service includes 1 or more basic services; or

c. Any new service other than switched access service, offered after July 15, 2008.

(2) For purposes of reclassifying basic service as competitive under § 706(c) of this title, competitive service shall be defined as services for which:

a. There are similar or substitute services or products which are offered and generally available within the relevant geographic area from at least 1 unaffiliated provider;

b. There is at least 1 unaffiliated service provider which is present and viable; and

c. There are no significant barriers to market entry.

(3) The Commission may also consider any other factors it deems relevant and in the public interest in making determinations regarding the classification of services as competitive.

(d) (1) With respect to subsection (a) above, "alternative provider of telephone service" means, but is not limited to, a provider of a wireline telephone service, commercial mobile service as defined in section 332(d), Communications Act of 1934, or Voice over Internet Protocol service as defined in § 202(i)(2) of this title.

(2) If a retail residential customer disagrees with a telecommunications service provider's classification of its location as having an alternative provider of telephone service, the customer may bring the dispute to the Secretary of the Department of Technology and Information or his or her designee to determine if an alternative provider of telephone service is available to retail residential customers at the location. This standard shall be satisfied if the Secretary determines that a service that provides the ability to transmit and receive voice communications, including E-911 communications, is available from an alternative provider of telephone service at the location.

(de) Phrases used to identify specific services within the foregoing classifications shall be given the meanings commonly ascribed to them in proceedings before the Commission or in the industry. In the event the Commission concludes any of such phrases to have uncertain meaning, the Commission shall, by order after a duly noticed hearing, adopt an appropriate definition.

§ 706. Offering, classification and abandonment of service.

(a) A service provider is not required to provide notice to the Commission for any new service.

(b) Competitive services, including new services, and basic services, other than switched access, are not subject to mandatory tariff or other filing requirements except as specifically provided in this subchapter.

(c) Upon application by the service provider, the Commission may, after notice and hearing, reclassify a basic services other than a switched access service as competitive. Any party proposing any such reclassification shall have the burden of supporting its proposal.

(d) Basic services other than switched access may be abandoned pursuant to § 203A of this title. Notwithstanding the provisions of § 203A(c) of this title, a service provider may abandon a competitive service ~~after providing the Commission and public with 30 days notice of its intention to do so at any time.~~

(e) A service provider governed under this subchapter and offering services defined in § 705(a)(1) of this title shall obtain Commission approval for mergers as set forth in § 215(a)(1) of this title or transfers of control as set forth in § 215(b) of this title; provided, however, that this subsection shall not apply to or restrict transactions between parent and subsidiary corporations or between entities of which at least 50% of the beneficial ownership is held by the same persons or entities prior to such merger or transfer of control. Applications and Commission approval of mergers or transfers of control shall be governed by § 215(c), (d) and (g) of this title.

87 (f) A service provider offering competitive services under this subchapter shall be subject to the provisions of
88 §§202 and 216-222 of this title.

89 (g) Notwithstanding any order or regulation of the Commission or law to the contrary, the Commission may not
90 investigate or adjudicate retail customer complaints for services governed by this subchapter except complaints related to
91 the adequate provisioning of basic services.

92 (h) A service provider offering services under this subchapter shall comply with the certificate of public
93 convenience and necessity requirements as set forth in § 203A(a) and (b) of this Title.

94 § 707. Provision of basic services.

95 (a) Except for the determination of rate changes for basic services, which determinations shall be made pursuant to
96 the provisions of this section, the offering of basic services in this State shall be subject to the provisions of subchapters I, II
97 and V of this chapter and §§ ~~301, 201, 202, 203A(c), 204, 206, 212, 217, 218, 222, and 303(a), 304 and 308~~ of this title and
98 all Commission procedures, rules and regulations shall apply except to the extent inconsistent with this subchapter.
99 ~~Changes to the terms and conditions for the offering of a basic service, other than rate changes, shall continue to require~~
100 ~~Commission approval.~~

101 (b) After January 1 of the year immediately following the initial election or reelection made pursuant to § 704 of
102 this title, rates for basic services, which for any reelecting provider shall be the rates in existence as of July 15, 2008~~13~~,
103 may be changed by the service provider or upon Commission initiative according to the following formula; provided,
104 however, that a rate for a basic service may not be changed more than once in any calendar year:

105
106
$$\text{Change in Rate} = \frac{\text{Change in Gross Domestic Product-Price}}{\text{Inflator since last rate change minus 3\%}}$$

107
108

109 The Gross Domestic Product-Price Inflation Index shall be that published by the United States Department of
110 Commerce with the most recent available data for the relevant period or, in the event that such index is discontinued, the
111 index determined by the Commission to most closely approximate the discontinued index.

112 (c) The following exceptions to the rate changes otherwise determined by the foregoing formula shall apply:

113 (1) A service provider may not increase switched access rates unless required to maintain parity with its
114 interstate switched access rates.

115 (2) A service provider may elect not to implement all or a portion of a rate increase otherwise required by
116 the formula.

117 (3) A service provider may elect to decrease rates in circumstances where the formula would require
118 otherwise.

119 (4) Upon request by a service provider, the Commission may, after notice and hearing, establish a
120 different rate change formula than that set forth in subsection (b) of this section for basic services provided by that service
121 provider in light of the degree of competition, including intermodal competition, the service provider faces, if the
122 Commission determines that the new formula will result in rates that are just and reasonable.

123 (5) In circumstances where a rate decrease would result from an application of the formula, the decreased
124 rate shall not be lower than the incremental cost of providing that basic service as determined by the Commission.

125 (6) Upon application by a service provider, the rate structure for a basic service may be adjusted by the
126 Commission where such adjustments would neither increase nor decrease the total revenue to the service provider from that
127 particular basic service.

128 (7) Upon application by a service provider other than a local exchange carrier, the rates charged for a
129 basic service which is purchased as a necessary component by such other provider of telecommunications services in order
130 to offer its telecommunication services may be adjusted by the Commission upon a showing by such other service provider
131 that the rate is not just and reasonable.

132 (8) Upon the application by any ratepayer or the service provider, rates for basic services may be adjusted
133 with approval by the Commission in order to reflect an unforeseen change in the service provider's costs of providing
134 telecommunications services, which change occurs for reasons beyond the control of the applicable service provider. Such
135 change may include, but not be limited to, legal or regulatory changes which affect such costs, the method of accounting for
136 such costs or taxes applicable to the service provider.

137 (9) Notwithstanding any other provision to the contrary, effective January 1, 2014, a service provider may
138 increase rates for basic services, other than switched access services, up to 10% per calendar year; provided, however, that a
139 rate for a basic service may not be changed more than once in any calendar year. The service provider shall provide 30 days
140 advance notice to customers of the first increase in rates.

141 (d) Rate adjustments made pursuant to paragraphs (c)(5), (6) and (7) of this section may be made with the
142 Commission's approval at any time and shall not be limited to once in any year.

143 (e) Notwithstanding subsection (b) of this section, no service provider may assess switched access rates pursuant
144 to tariff that are higher than the switched access rates set forth in the tariffs of the incumbent local exchange carrier in the
145 same service territory ~~service provider serving the largest number of local exchange access lines in the State.~~

146 § 708. Provision of competitive services.

147 (a) ~~Except as otherwise provided in subsection (b) of this section below, any~~ Any provider of a competitive service
148 may determine its price and other terms and conditions under which such competitive service will be offered, and
149 subchapter II of this chapter shall not apply to the provision of such services except as provided in § 706(f) herein.

150 (b) ~~When a basic service that has not been reclassified pursuant to § 706(c) of this title is included in a bundle that~~
151 ~~is deemed a competitive service under this subchapter, the efficiency, sufficiency, consistency and adequacy of such basic~~
152 ~~portion of the bundle shall be governed by subchapter II of this chapter, except as otherwise provided in this subchapter. In~~
153 ~~adopting or enforcing any regulations pursuant to this provision, the Commission may consider the degree of regulatory~~
154 ~~obligations imposed upon competing alternative service providers, including intermodal service providers.~~

155 (eb) The Commission may, upon the filing of a written complaint, investigate claims related to predatory pricing
156 of competitive services consistent with principals of federal and state antitrust law. If the Commission opens a proceeding
157 to investigate such claims, the burden of proof shall be on the complainant. If the Commission finds that predatory pricing
158 has occurred, the Commission may enjoin the conduct, but may not otherwise determine the price or other terms and
159 conditions under which a competitive service will be offered.

160 § 709. Regulatory Assessment.

161 (a) The regulatory assessment imposed under §115(d) of this title upon service providers electing to be governed
162 under this subchapter shall be .003 (3 mills) multiplied by gross revenues as defined in §115(c) for the period January 1,
163 2013, to July 1, 2013.

164 (b) After July 1, 2013, §115 of this title shall no longer apply to public utilities that provide telecommunications
165 services.

166 **Section 2.** Amend Section 201, Title 26 of the Delaware Code by making insertions as shown by underlining and
167 deletions as shown by strike through as follows and by redesignating the current subsection (d) as subsection (e):

168 § 201. General jurisdiction and powers.

169 (c)(1) Notwithstanding any other provision of law, in In the exercise of supervision and regulation over public
170 utilities, the Commission (1) shall forbear from regulating the rates, terms, and conditions of competitive retail
171 communications services and (2) shall not investigate or adjudicate retail customer complaints for services except
172 complaints related to the adequate provisioning of basic services.

173 (d) (1) In the exercise of supervision and regulation over public utilities other than those that provide
174 telecommunications services, the Commission may, upon application or on its own motion, after notice and hearing, forbear
175 from ("deregulate") in whole or in part, its supervision and regulation over some or all public utility products or services
176 and over some or all public utilities where the Commission determines that a competitive market exists for such products
177 and services and where the Commission finds that such deregulation will be in the public interest.

178 (2) Any application under this subsection shall, at a minimum, include specific proposal or proposals,
179 supporting statements or testimony, an analysis of the effects on the utility's regulated customers and an implementation
180 plan. The application shall affirmatively establish that the deregulation being considered will not adversely affect the
181 availability, cost or quality of utility services provided to the utility's regulated customers.

(3) The Commission shall approve or disapprove any such deregulation applications within 180 days after submission thereof, except that, for good cause found, the Commission may enter an order extending this period for an additional 90 days.

(4) The Commission shall determine how a public utility shall account for such deregulated products or services (including cost allocations where found to be appropriate) so as to ensure that the utility's regulated customers neither benefit unduly from nor unduly provide a subsidy to the deregulated products or services; provided, that such accounting determination shall not thereafter be changed by the Commission except for good cause shown.

(5) In connection with any application under this subsection for forbearance from Commission supervision and regulation, the Commission shall find, among other relevant things, the following:

a. Whether a competitive market exists for the particular utility product or service being requested to be wholly or partly deregulated. Conditions and factors to be considered may include, but are not limited to, the following:

1. The existing or prospective market power of the utility with respect to its products or services for which deregulation is sought; and

2. If there are significant entry or exit costs or other barriers to potential competitors; and

3. If there is a reasonable basis to expect that prices of wholly or partly deregulated products or services will reflect the incremental costs of supply;

b. Whether any safeguards are necessary to prevent a material adverse effect on utility service quality or rate levels;

c. Whether or not an option to remain under the Commission's supervision and regulation should be made available for customers whose utility products and services would be deregulated by the proposal;

d. Whether or not the public utility shall unbundle each service or function on which a service depends to its fundamental elements and shall make those elements separately available to any customer whose utility service is being deregulated by the proposal under terms and conditions, including price, that are the same or comparable to those used by the public utility in providing its own service. The public utility shall not unreasonably discriminate between affiliated and unaffiliated providers of services in offering unbundled features, functions and capabilities; and

e. Whether the Commission should forbear from regulating competing providers of such products or services.

(6) Where the Commission has made a determination to forbear from its supervision and regulation under this section, the Commission shall have the ongoing right to review, examine and audit the books and records of the applicable utility, and the relevant books and records of any relevant nonregulated affiliate. This right shall be the same as

the Commission's right of access to inspection and examination of the utility's regulated books, accounts and records and appropriate safeguards regarding disclosure of confidential information shall be provided.

(7) Thirty months after any approval of forbearance from regulation hereunder, the utility shall file a report with the Commission summarizing its activities for that wholly or partly deregulated activity during its first 24 months of operation. Such report shall, at a minimum, address the criteria that the Commission deemed relevant in approving the request to deregulate such product or service. The report shall also describe the service provider's investment during the previous 24 months. Such report shall also describe the level of planned investment over the next 5 years. The Commission may require that similar reports be submitted biannually thereafter.

(8) The Commission, after notice and hearing, may prospectively revoke or reverse any forbearance of regulation granted hereunder where it finds that doing so is in the public interest. Where the Commission revokes or reverses a prior decision made under paragraph (c)(1) of this section, the Commission shall determine that the current rates for the related products or services are just and reasonable or shall establish new rates that are just and reasonable.

(9) This subsection shall not apply to a telecommunications service provider for so long as such provider is governed under the provisions of subchapter VII-A, Chapter 1 of this title.

Section 3. Amend Section 202(i), Title 26 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 202. Limitations on jurisdiction of Commission.

(i) (1) Notwithstanding any other provision of law to the contrary, the Commission shall have no jurisdiction or regulatory authority over Voice over Internet Protocol ("VoIP") service, as defined in paragraph (i)(2) of this section, or IP-enabled service, as defined in paragraph (i)(3) of this section, including but not limited to, the imposition of regulatory fees, certification requirements, rates, terms or other conditions of service.

(2) "Voice over Internet Protocol service" or "VoIP service" means any service that:

a. Enables real-time 2-way voice communications that originate or terminate from the user's location in Internet protocol or any successor protocol; and

b. Utilizes a broadband connection from the user's location.

(3) "Internet protocol-enabled service" or "IP-enabled service" means a service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format or any successor format, regardless of whether the communication is voice, data or video.

(34) Nothing herein shall be construed to either mandate or prohibit the assessment of Enhanced 911 fees pursuant to Chapter 101 of Title 16 on VoIP service, or to mandate or prohibit the payment of any switched network access rates or other intercarrier compensation rates that may be determined to apply.

Section 4. Amend Section 203A, Title 26 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 203A. Certificate of public convenience and necessity; abandonment or discontinuance of business, operations or service.

(a) (1) Subject to the provisions of subsection (b) of this section and §§ 102, 201, 202 and Chapter 10 of this title, and excluding electric suppliers, no individual, copartnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof, shall begin the business of a public utility nor shall any public utility begin any extension of its regulated public utility business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require the operation of such regulated public utility business or extension.

(2) Notwithstanding any other provision of law, no Commission approval shall be required for any transfer of a certificate of public convenience between public utility companies providing telecommunications services that operate under common ownership.

(23) This section shall not be construed to require any public utility to secure such a certificate for any extension within the perimeter of any territory already served by it.

(34) The Commission, after hearing, on the complaint of any public utility claiming to be adversely affected by any proposed extension, may make such order and prescribe such terms and conditions with respect to the proposed extension as may be required by the public convenience and necessity.

(b) (1) If any individual, copartnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof (or the predecessor in interest of any such person, party or legal entity), was in bona fide operation within this State on June 28, 1974, of any electronic communication in whole or in part by wire (other than telephone, including domestic public land mobile radio or telegraph service, system, plant or equipment) including, but not limited to, cable television service, system, plant or equipment, for public use, the Commission shall issue a certificate of public convenience and necessity authorizing such person, party or legal entity without further proceedings to continue operating the said service, system, plant or equipment, to the same extent as said operations were being operated on June 28, 1974, such certificate to identify by number and date of issuance the certificate under which the applicant is carrying on such operation, if the application for such certificate of public convenience and necessity is filed with the Commission on a form approved by the Commission within 120 days after June 28, 1974. Pending the determination of any such application the continuance of such operation without a certificate of public convenience and necessity shall be lawful.

276 (2) Interruptions of service in such operations over which such person, party or legal entity, or the
277 predecessor in interest thereof, had no control, shall not be considered in determining whether or not there has been an
278 abandonment of any such operations.

279 (3) In issuing any certificate of public convenience and necessity under this subsection, the Commission,
280 in its discretion, may define or limit the territory or territories in this State within which the activities authorized by the
281 certificate may be conducted, but in no case shall such territory or territories be smaller than the territory or territories in
282 this State in which the applicant was in actual bona fide operation on June 28, 1974.

283 (4) The application for a certificate of public convenience and necessity under this subsection shall be
284 verified and shall contain such information as the Commission deems necessary to show that the applicant was not engaged
285 merely in isolated, incidental, intermittent, sporadic and infrequent operations.

286 (5) The Commission may adopt and approve such forms as it deems necessary for this purpose.

287 (c) A public utility that provides telecommunications services may abandon or discontinue, in whole or in part, the
288 provision of any competitive retail telecommunications service.

289 (ed) (1) Subject to the provisions of Chapter 10 and § 706(d) of this title and excluding electric suppliers, no
290 public utility shall abandon or discontinue, in whole or in part, any regulated public utility business, operations or services
291 provided under a certificate of public convenience and necessity or otherwise which are subject to jurisdiction of the
292 Commission without first having received Commission approval for such abandonment or discontinuance.

293 (2) Applications for such approval shall be made to the Commission in writing, verified by oath or
294 affirmation and be in such form and contain such information as the Commission may from time to time require.

295 (3) The Commission shall approve any such application when it finds that the utility has met its burden of
296 proving that the abandonment or discontinuance is reasonable, necessary and not unduly disruptive to the present or future
297 public convenience and necessity.

298 (4) The Commission may make such investigation and hold such hearings in the matter as it deems
299 necessary or appropriate, and may attach reasonable terms and conditions to the granting of such approval.

300 (5) If, within 60 days after the filing of such application, the Commission has not acted concerning the
301 application, it shall be deemed to have been approved. The Commission may, within such 60-day period, set the matter for
302 hearing, in which event the Commission shall render a decision concerning said application within 7 months from the date
303 such application was filed or the application shall be deemed in fact and law to be approved, unless within said 7-month
304 period the Commission for good cause shown shall enter an order extending the period for decision for a further reasonable
305 time not to exceed 120 days.

(6) Nothing contained in this section shall be construed to require formal application for approval of abandonment or discontinuance of service to any individual customer or customer class where the basis for such abandonment or discontinuance is nonpayment of bills or other violation of the utility's rules, regulations and tariffs.

(7) The Commission may seek injunctive relief in the Court of Chancery to prevent any abandonment in violation of this subsection and in such proceeding shall not be required to post security for any temporary or preliminary injunction.

(de) As of the implementation dates specified in § 1003(b)(1) and (2) of this title [repealed], nothing contained in this section shall be construed to require application for approval of the abandonment or discontinuance of service by an electric supplier.

Section 5. Amend Section 204, Title 26 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 204. Extension of utilities' facilities.

(a) The Commission may, after hearing, upon notice, by order in writing, require every public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where, in the judgment of the Commission, such extension is reasonable and practicable and will furnish sufficient revenue to justify the construction and maintenance of the same, and when the financial condition of the public utility reasonably warrants the original expenditures required in order to make and operate such extension; provided, however, the Commission shall consider, among other things, the size and amount of additional and potential customers to be served, whether the new customers will contribute to any capital expenditures required by the extension and whether the public utility must borrow funds to provide the extension of service.

(b) Notwithstanding any other provision of law, a telecommunications service provider is not required to establish, construct, maintain, operate or extend its existing facilities where the potential customers to be served have service available from one or more alternative providers of wireline or wireless communications. Further, notwithstanding any other provision of law, if the Commission makes a determination under subsection (a) requiring such extension, a telecommunications service provider may fulfill such obligation through the use of any and all available wireline, wireless or other technologies. The use of wireline, wireless or other technologies may not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

Section 6. Amend Section 215, Title 26 of the Delaware Code inserting a new subsection (h) as shown by underlining as follows:

(h) Notwithstanding any other provision of law, no Commission approval shall be required for any internal reorganization or merger of public utility companies providing telecommunications services that operate under common ownership.

Section 7. Amend Section 301, Title 26 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 301. Rate schedule and rate classifications.

(a) The Commission may require every public utility to file with the Commission complete schedules of every classification employed and of every individual or joint rate, fare or charge made, charged or executed by the public utility for any regulated product or service supplied or rendered within this State. Every application for a certificate of public convenience and necessity shall include a proposed tariff for approval by the Commission. A copy of all regulated tariffs then in effect shall be available for inspection by customers at each public office of the utility where applications for service are received.

(b) This section shall not apply to charges made for electric supply service or for transmission or ancillary services on and after October 1, 1999, for Delmarva Power & Light Company and April 1, 2000, for Delaware Electric Cooperative.

(c) Any person or entity in the business of a wastewater utility as of June 7, 2004, and subject to the supervision and regulation of the Commission under this chapter shall file a schedule of its rates in effect as of June 7, 2004, by November 3, 2004, in such form as the Commission may require. On July 6, 2004, such wastewater utility's rates will be deemed in effect pending the outcome of an initial rate change request application filed in accordance with this title. Such application must be filed by January 2, 2005. A wastewater utility required to make such a rate filing may seek the assistance of the Commission in preparing its rate filing. Rates in effect on July 6, 2004, shall be deemed temporary and not subject to change, unless ordered by the Commission. Section 306 of this title shall not apply pending the outcome of this initial rate setting case. The Commission shall have 9 months to complete its review following the filing of the rate change application. However, to the extent possible, the Commission shall attempt to expedite such application. For good cause shown, the Commission may waive any provision of this subsection.

(d) Notwithstanding any other law, no public utility may assess switched access rates pursuant to tariff that are higher than the switched access rates set forth in the tariffs of the incumbent local exchange provider in the same service territory ~~service provider serving the largest number of local exchange access lines in the State.~~

(e) Notwithstanding any other law, a public utility that provides telecommunications services shall not be subject to mandatory tariff or other filing requirements except with respect to switched access service.

SYNOPSIS

This bill amends sections of Title 26 which govern public utilities that provide telecommunications services. It modernizes the rules governing such utilities and aligns them with the rapid competitive and technological changes affecting the industry. The bill recognizes the competitive choices consumers in Delaware have and gives providers flexibility to compete, while protecting the interests of consumers.

Section 1 updates the provisions of subchapter VII-A of Title 26 to reflect the competitive environment that now exist for various services. Public Service Commission oversight over competitive services is reduced while oversight is retained for "Basic services," including individual residential local exchanges access line service where there is no alternative provider and switched access service.

Sections 2 through 4, 6 and 7 amend various provisions of Title 26 applicable to telecommunications service providers to provide consistency between those who have elected to be governed under subchapter VII-A of Title 26 and those that have not.

Section 5 amends section 204 of Title 26 to allow telecommunications service providers to use alternative technologies in the event the Commission orders an extension of the utility's facilities.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE FORMAL)	
COMPLAINT OF GREGORY TERINONI)	PSC Complaint Docket 15-1066
AGAINST DELMARVA POWER & LIGHT)	
COMPANY CONCERNING SERVICE)	
TERMINATION FOR NON PAYMENT)	
(FILED JUNE 24, 2015))	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were served upon the following on September 23, 2015 in the manner noted below:

FILED VIA DELAFILE

ALSO SENT VIA ELECTRONIC MAIL

Donna Nickerson
Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904
Email: donna.nickerson@state.de.us

FILED VIA DELAFILE

ALSO SENT VIA ELECTRONIC MAIL

Julie Donoghue, Esquire
Deputy Attorney General
Delaware Public Service Commission
861 Silver Lake Blvd., Suite 100
Dover, DE 19904
Email: julie.donoghue@state.de.us

FILED VIA DELAFILE

**ALSO SENT VIA ELECTRONIC
MAIL**

William J. Mulgrew, Esquire
R. Joseph Hrubiec, Esquire
Albert M. Greto, Esquire
Law Offices of Albert M. Greto
715 N. Tatnall Street
P.O. Box 756
Wilmington, DE 19899
Email: wmulgrew@gretolaw.com
rhrubiec@gretolaw.com
algreto@gretolaw.com

FILED VIA DELAFILE

**ALSO SENT VIA ELECTRONIC
MAIL**

Regina Iorii, Esquire
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
Email: regina.iorii@state.de.us



Todd L. Goodman
Pamela J. Scott
Counsel for Delmarva Power & Light Company
P.O. Box 6066
Newark, DE 19714-6066
(302) 429-3143
pjscott@pepcoholdings.com